

GOVERNMENT OF TELANGANA
ABSTRACT

Backward Classes Welfare Department – Establishment – Notional promotion to Sri P.Samson, Assistant Backward Classes Welfare Officer, Kukatpally, Ranga Reddy District w.e.f., 01.09.2005 – Orders – Issued.

BACKWARD CLASSES WELFARE (A1) DEPARTMENT

G.O.Rt.No.41

Date: 24.01.2015

Read the following:

- Ref:-
1. Sri P.Samson, ABCWO Kukatpally, R.R.District letter dt. 22.04.2013.
 2. This office Memo No.2170/A/A2/2013, dt.23.04.2013.
 3. Commissioner, BCW Lr.No.F1/3391/2013, dt.17.10.2013.
 4. Note for filling up of the post of ABCWO officers Zone-VI in BC Welfare Dept.
 5. list of ACB cases pending against HWOs
 6. Minutes of the DPC for the first level gazetted posts (from HWO Gr.I to ABCWOs in Zone-VI)
 7. State Election Commission Lr.No.739/SEC-F1/2005, dt.29.08.2005.
 8. APAT O.A.No.6634/2005.
 9. CBCW AP Memo.No.A1/705/04-VI, dt.17.01.2005 and 2.11.2005.
 10. DPC held on 30.06.2005 to 30.06.2006 in list following HWOs are in DPC.
 11. Provisional seniority list of HWO Gr.I of Zone-VI.
 12. CBCW AP Proc.No.A1/705/2004-VI, dt.20.06.2005.
 13. P.Samson letter dt. 28.08.2005 addressed to CBCW AP.
 14. P.Samson letter dt. 28.09.2005 addressed to CBCW AP.
 15. Note in O.A.No.6634/2005, filed by Sri P.Samson, HWO.
 16. P.Samson letter dt. 14.11.2005 addressed to CBCW AP.
 17. APAT C.A.No.1043/2005 in O.A.No.6634/2005 dt.16.12.2005 filed by Sri P.Samson.
 18. CBCW AP Proc.No.A1/3244/2005, dt. 02.01.2006.
 19. APAT order dt.17.03.2008 in O.A.No.6634/2005, with VMA 127/2007.
 20. C.A.No.84/2009 in O.A.No.6634/2005 dt.05.03.2009.
 21. CBCW AP Proc.No.A1/3244/2005, dt. 23.05.2008.
 22. CBCW AP Proc.No.A1/2678/2009-Z-VI-(5),dt.6.05.2009.
 23. CBCW AP Lr.No.F1/3391/2013, dt.15.03.2014.
 24. This office Memo No.2170/A1/2013-2, dt.29.07.2014.
 25. Sri P.Samson letter dt. 29.10.2014 addressed to Prl. Secy., BCW With O.A.No.6165/2014, dt.21.10.2014.
 26. GOAP State Commission for SC & STs S3/3277/RR/2005, dt.05.01.2006.
 27. This office Memo No.2170/A1/2013, dt.11.12.2014.
 28. This office Memo No.2170/A1/2013, dt.03.01.2015.
 29. C.A.No.1905/2014 in O.A.No.6165 filed by Sri P.Samson.
 30. This office Memo No.2170/A1/2013, dt.12.01.2015.
 31. CBCW AP Lr.RC.No.B2/3391/2014, dt.21.01.2015.

ORDER

In the reference 1st read above, Sri P.Samson, Assistant Backward Classes Welfare Officer, Kukatpally, Ranga Reddy District submitted representation to Government, inter-alia, that “he was also in the DPC on 1.6.2005 and five members were promoted as ABCWOs and his case is pending and there is a clear vacancy due to

superannuation of Smt Anathonamma in 2005 and he also belongs to Scheduled Caste and he is the only person belonging to Scheduled Caste in that panel year. Sri Venkata Narasaiah who is presently working as DBCWO, who was trapped by the Anti Corruption Bureau(ACB) was promoted as ABCWO and that was illegal. The authorities neglected him though he belongs to Scheduled Caste. The promotion of Sri Venkata Narasaiah was illegal and therefore requested that he may be promoted as ABCWO with notional seniority from 1.6.2005.

2. In the reference 3rd read above, the then Commissioner, Backward Classes Welfare reported that Sri.P.Samson, ABCWO, Kukatpally, Ranga Reddy District in his representation dated 22.4.2013 submitted that he was appointed as HWO Gr-II on 05.11.1982 and promoted as HWO Gr-I on 01.01.1995 and repeated his request as above. Hence he has requested the Government for promotion as ABCWO w.e.f. 01.06.2005 i.e., the date of promotion of Sri V.Venkata Narasaiah. Sri P.Samson, ABCWO further, requested the Commissioner, BC Welfare to furnish report to Government for according notional promotion as ABCWO w.e.f. 01.06.2005. It was further reported that during the year 2005, Six (06) vacancies, that is (05) existing vacancies and (01) arising vacancy as on 30.06.2005 of ABCWOs arisen in Zone –VI. For filling up these vacancies DPC was conducted for the panel year 2005-06. It was also reported that in the Annexure-III (B) of DPC note i.e., list of ACB cases pending against the HWOs, the following individuals names were included:

- a) Sri V.Venkata Narasaiah, HWO Gr-I, GBCBH, Yerrabally, Nalgonda District was placed under suspension on the preliminary report of the ACB authorities. The enquiry has also been conducted by the RDo, Miryalaguda and according to his report no single charge is held proved. However, taking a lenient view the individual has been reinstated into duty and posted at GBCBH, Tirumalagiri pending issuance of final orders by the Government. Keeping in view of the orders issued by Government in BC Welfare Dept., vide Memo.No.4799/Vig.Cell/03, Dt:20.05.2004 and orders served on 05.6.2004. The final orders of Government are awaited. Later he was reinstated into service on 10.03.2005 pending issuance of final orders by the Government. Government orders are awaited.
- b) Sri G.Lingaiah, HWO Gr-I, GBCBH, Haliya, Nalgonda District was placed under suspension for having committed certain irregularities in GBCBH, Yerrabally while he was working as in charge HWO. Subsequently he has been reinstated into duty and posted at GBCBH, Haliya on pending enquiry. The enquiry is in process and the report from the RDO, Miryalaguda/ Enquiry Officer is still awaited.

3. It was further reported that as in the reference sixth read above, in the final seniority list of HWOs Gr-I in Zone-VI, the following persons were fully qualified and eligible for promotion to the post of ABCWOs. Hence, they were placed in Zone of consideration:

1. K.Goverdhan
2. V.Venkata Narasaiah
3. M.Vimala Devi
4. M.Indira
5. P.Dasharatha
6. G.Ram Reddy
7. C.Devidas
8. P.Samson

4. In the minutes of the DPC held on 30.06.2005, the Committee approved the panel 2005-06. The Committee has examined the case mentioned in Annexure-III (B) of DPC notes pertaining to Sri V.Venkata Narasaiah, HWO Gr-I. After careful consideration of the case in view of the G.O. Ms. No.257, GA (Ser.C) Dept., Dt:10.6.1999, the

Committee has decided to keep the name of Sri V.Venkata Narasaiah in the panel and deferred for clearance of the case. Further, the Committee decided to give promotions to the candidates in the panel approved and mentioned hereunder will be purely **temporary on adhoc** basis and the promotions effected are **subject to the allotment of Direct Recruitment by APPSC and outcome of the orders, if any, from the Hon'ble APAT and High Court.**

Panel for 2005-06

1. K.Goverdhan
2. V.Venkata Narasaiah
3. M.Vimala Devi
4. M.Indira
5. P.Dasharatha
6. G.Ram Reddy
7. C.Devidas
8. AP.Samson

5. The aforesaid panel approved would be in force up to 30.6.2006. Accordingly, the following persons were promoted as ABCWOs vide Procg.No.A1/3244/2005, Dated:30.06.2005.

1. K.Goverdhan
2. M.Vimala Devi
3. M.Indira
4. P.Dasharatha
5. G.Ram Reddy
6. C.Devidas

The Committee has decided to keep the name of Sri V.Venkata Narasaiah in the panel and deferred for clearance of the case.

6. It was further reported that the last candidate P.Samson is in the panel (Sl.No.8), **at that time one (01) vacancy arisen at Miryalaguda, Nalgonda District on 31.08.2005 due to retirement of Smt Anathonamma, ABCWO. At that time Sri P.Samson was eligible for promotion as ABCWO w.e.f. 01.09.2005.** Further, the petitioner also represented on 29.08.2005 to the Commissioner, BC Welfare to consider his promotion as ABCWO in the existing vacancy at Miryalaguda, Nalgonda District on 01.08.2005 due to retirement of Smt Anathonamma, ABCWO.

7. In the reference 7th read above, issued notification for holding Elections to Municipalities and Municipal Corporations in the State and directed that there shall be a ban till the completion of the election process on 30.9.2005 on recruitment/ appointments/ promotions during the period from the date of notification to the declaration of results. Even presuming that election notification came into force with effect from 29.08.2005 to 30.09.2005 and even that ban lapsed on 30.09.2005. From 1.10.2005 there is no objection and ban to give promotion to the petitioner herein. He was not given promotion from 1.10.2005 to 30.06.2006.

8. Further Sri P.Samson, Assistant Backward Classes Welfare Officer, Kukatpally, Ranga Reddy District again represented to consider his promotion as ABCWO in the existing vacancy at Miryalaguda on 28.9.2005. In the reference 8th cited, the petitioner approached the Hon'ble APAT to direct the respondents to dispose of the representations, Dt:28.8.2005 and 28.9.2005 by promoting the applicant as ABCWO in the existing vacancy as per the panel 2005-2006. In the reference 9th cited a Note was submitted by the Director, BC Welfare to GP for BCW, APAT stating **that the request of the applicant, Dt:28.8.2005 and 28.9.2005 by promoting him as ABCWO is under consideration and requested the GP, to appraise the above position to the Hon'ble APAT."**

9. The Hon'ble APAT in its interim order, dated 03.11.2005 made the following; **"Pending disposal of the O.A., the 1st and 2nd respondents are directed to consider and pass orders on the representations of the applicant, Dt:28.8.2005 and 28.9.2005 wherein he has requested the authorities to consider his claim for promotion to the post of ABCWO within four weeks from the date of receipt of this order."** In response to the above directions the petitioner also filed CA NO.1043/2005 in O.A No.6634/2005.

10. Further it was reported that on 02.01.2006 speaking order was issued to the petitioner that his promotion to the post of ABCWO will be considered after review of the panel as per Rule 6 of APSSS Rules, 1996 and also filed counter affidavit in O.A No.6634/2005 vide Lr.No.A1/3244/2005, Dt:30.08.2006.

11. Further in the reference 19th cited, the Hon'ble APAT made the following: *"Now, the points for consideration are whether the applicant is entitled to be considered for promotion as ABCWO in the vacancy that had arisen at Miryalaguda? To what relief? Admittedly, the applicant is at Sl.No.37 in the seniority list of HWOs Grade-I of Zone-VI. The DPC which met on 30.06.2005 considered the promotions for (6) vacant posts of ABCWO and selected (6) persons for promotion to the said posts. The 6th person who was selected stands at Sl.No.36 is not eligible as per the DPC., as can be seen from the counter. So, the next person who is eligible for promotion is the applicant, who is at Sl.No.37, while so, one, N.Gyanam who relinquished his promotion as ABCWO and was reverted as HWO Grade-I and who stands at Sl.No.8 in the seniority list, claimed for promotion and filed O.A No.913/2006, and an interim direction was also granted by the Tribunal to consider his case for such promotion. In fact, O.A No.913/2006 also has come up for consideration today. It appears, Mr.N.Gyanam was promoted as ABCWO as per order, Dt:28.4.2007 in Procs.No.A1/5222/2007-2-VI-1 and that he also retired on attaining the age of superannuation on 31.07.2007. So, the question of promoting the applicant in the said vacancy does not arise. But, the learned counsel for the applicant submits that since N.Gyanam has retired, the applicant has to be considered for promotion in his vacancy. As this development has taken place during the pendency of this O.A., naturally, one cannot expect to know the stand of the respondents on that aspect. However, it is obvious that there is a vacancy of ABCWO due to the retirement of N.Gyanam on 31.7.2007. The applicant is, in the normal course, entitled for consideration for promotion as he is at Sl.No.37 in the seniority list. But, there may be a contingency if the seniors to the applicant who overlooked for not acquiring the requisite qualifications might have acquired the qualifications subsequently. So, in case there is no candidates, who is senior to the applicant, who is eligible and qualified for promotion to the post of ABCWO, the applicant can be considered for such promotion. Therefore, I allow this application in part, and direct the respondents to consider the case of the applicant for promotion in the vacancy that has arisen due to the retirement of N.Gyanam or any other vacancy, if the applicant comes under the Zone of consideration as per his seniority and qualification, and if his seniors are not eligible for such promotion, on account of their not acquiring the requisite qualifications. Necessary orders to be passed within a period of eight weeks from the date of receipt of this order. V.M.A. is disposed of."*

12. In view of the orders of the Hon'ble APAT, Dt:17.03.2008 in O.A NO.6634/2005, vide Procs.No.A1/3244/2005, Dt:23.02.2008 of the Commissioner, BC Welfare issued orders to Sri P.Samson that "the seniority prepared and communicated vide Procs.No.A1/705/2004-VI, Dt:20.06.2005 according to which the candidature of Sri P.Samson has to be considered for promotion, is not in force as on date following the orders of the Hon'ble APAT in O.A No.2970/2003, Dt:09.11.2006 and Hon'ble High Court in W.P.No.13282/2007, Dt:11.09.2007 wherein it was set aside the above seniority on the ground that the same was prepared in common i.e., both Male and Female HWOs and directed to maintain separate seniority lists for Male and Female HWOs. Hence the place of the individual in the seniority list will be decided on receipt of separate seniority lists from the Dist. Collectors of Zone-VI and the case of the individual for promotion as ABCWO will be considered accordingly in due course."

13. It was further reported that the individual has again filed another CA No.84/09 in O.A No.6634/2005 to consider the case of the applicant for promotion as ABCWO. Accordingly in Lr.No.A1/3244/05, Dt:04.08.2009 of the Commissioner, BC Welfare has submitted note to GP for BCW(S), APAT that the Dist. Collectors in Zone-VI have furnished the separate seniority lists of HWO Grade-I. On the basis of the seniority list, the Commissioner, BCW has prepared Zonal seniority list of HWOs Grade-I in Zone-VI. As per the seniority list, the case of the applicant was considered and he was promoted as ABCWO in Procs.No.A1/2678/09-Z-VI-(5). Dt:26.5.09 on adhoc basis.

14. In the reference 29th cited, the Hon'ble APAT passed the following orders: " Admit issue notice to the respondents returnable in four weeks. Pending disposal of the O.A. the 1st respondent is directed to pass appropriate orders as per rules, on the recommendations of the 2nd respondent in his letter vide Rc.F1/3391/2013, dt. 17.10.2013 regarding notional promotion in the cadre of ABCWO to the applicant within a period of four weeks from the date of the receipt of a copy of the order".

15. Further, the record of enquiry reveals that O.A.No.6165/2014 was filed by the petitioner wherein interim direction was given on 21.10.2014 as discussed above. In the reference 28th read above, the Director was requested to furnish his specific recommendations to comply with the direction of the court. In the reference 29th read above, contempt application was filed. In response the same, in the reference 31st read above, the Director BCW has reported that notices were issued to the affected parties viz., Sri P.Vijay Kumar, Sri K.Rajanna, B.Krishna Reddy, P.Narender Reddy and A.Pushpalatha. In respect of Sri P.Vijay Kumar, the Director held that " not having Accounts Test Part-II / Executive Officers not qualified and hence he is not eligible for promotion during the panel year 2005-06. In respect of Sri K.Rajanna, Director reported that not eligible for promotion during panel year 2005-06 as he is not having Degree qualification. In respect of Sri B.Krishna Reddy and Sri P.Narender Reddy, Director reported that not eligible for promotion during panel year 2005-06 as he is not having Degree qualification. In respect of Smt A.Pushpalath, Director reported that the individual is most junior in the cadre of HWO Gr.I. Further Director BC Welfare reported that the above objections were found not valid and their objections cannot be considered as they are not eligible for promotion during the panel year 2005-06 where DPC was held on 30.06.2005 and it is not in conformity with rule 24 of APSSS 1996 as they are not going to be affected. Finally the Director reported that the Govt., may accord permission to promote Sri P.Samson, ABCWO Kukatpally, R.R. District notionally w.e.f., 1.9.2005 i.e., from the date of arising vacancy due to retirement of Smt Anthonamma, ABCWO , Miryalaguda, Nalgonda District on attaining the age of superannuation of 58 years and to fix his seniority in the cadre of ABCWO duly following rule 24 (C) of APSSSR 1996, subject to outcome of any court cases from APAT/AP High Court etc., and also pending disciplinary cases if any.

16. *Further, it is observed the **avoidable legal battle** in the case almost started from 2005 onwards and continues even till date i.e. 24.1.2015, despite on several occasions, the petitioner was forced to knock the doors for justice. Admittedly, the petitioner was forced to go to the Tribunal through the following OAs and CAs. (OA 6634/2005, CA 1043/2005, CA 84/2009, OA 6165/2014, CA 1905/2014 etc).*

17. *In this connection it is relevant to remember the words of Hon'ble Justice E.S.Venkataramaiah in the Bench decision in K.C.Vasant Kumar vs State of Karnataka (1985 Supp SCC 714, quoted in Tamil Nadu Backward Classes Commission Report dated 8th July, 2011 page 38-39), considered as to why this necessity arose for reservation of backward classes and said "**perhaps, not all inequalities can ever be rectified and it is certain that some can be rectified only by creating new inequalities and new grievances**". By strict application of general equality what would be the result: it will result in permanent justice or permanent inequality. This sort of a proposition was first enunciated by the Permanent Court of International Justice in the famous case of minority schools in Albania etc. In that case, the permanent court of*

international justice held that the application of perfect equality may result inequality. Therefore, protection is given in the form of reservation. It has been termed as “protective discrimination” or “compensative discrimination” and Justice Venkataramaiah coined a new word “result oriented discrimination”. Then, such a competition must be fair. Not only it must be free but it must also be fair. The competition to be fair, we must have to give certain weightage or certain handicaps or certain reservation for those persons who are hailing from such socially or educationally backward classes of persons and that is why classification or reservation is provided under the Constitution. While discussing this issue, Justice Venkataramaiah said, “for generations, that is for thousands of years, some communities have been kept in the dark and they were not permitted to learn”. Such a situation cannot be rectified in a short span of 40 or 50 years but it has to go on for number of years till the State comes to a conclusion that all of them attained certain amount of advancement. Then, he says, “inalienable rights cannot be earned posthumously”. “Social injustice always balances its books with the red ink”.

18. Government after careful examination of the above facts, in view of the report of the Director BC Welfare, Telangana State and also in view of the interim directions of the APAT dated 21.10.2014, Government hereby assign notional promotion to Sri P.Samson, ABCWO Kukatpally, R.R. District w.e.f., 1.9.2005 i.e., from the date of arising vacancy due to retirement of Smt Anthonamma, ABCWO, Miryalaguda, Nalgonda District and to fix his seniority in the cadre of ABCWO, his pay should be fixed as monetary benefit can be given from the date of performing duties in the post and subject to outcome of any court cases from APAT/AP High Court.

19. The Director(FAC), Backward Classes Welfare, Telangana State is requested to take further necessary action accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF TELANGANA)

DR. T.RADHA
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Director (FAC), Backward Classes Welfare, Telangana State, Hyderabad.
The individual through - Director (FAC), Backward Classes Welfare, Telangana State, Hyderabad.
The District Collector, Ranga Reddy District.
The District Backward Classes Welfare Officer, Ranga Reddy District.
The Government Pleader for Backward Classes Welfare, Telangana State, Andhra Pradesh Administrative Tribunal, Hyderabad.
Copy to:
P.S. to Minister (BCW)
P.S. to Principal Secretary to Government, Backward Classes Welfare Department.
SF / SC

// FORWARDED : BY ORDER //

SECTION OFFICER